

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 144 of 2001
(Old No. 36 of 1986)

1. Pitri Sharan S/o Satya Parsad
2. Ayodhya Parsad S/o Satya Prasad
3. Pitamber Dutt S/o Kamla Ram
All R/o Village Godhmu,
Police Station Tehri Out Post Chamba,
District Tehri Garhwal.

..... Appellant.

Versus

The State Respondent

Ms. Lokendra Dobhal, Advocate for the appellants.
Mr. Kuldeep Rawal, Advocate for injured Shyam Lal.
Mr. Lalit Verma, learned A.G.A. for the respondent State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 23.12.1985, passed in Sessions Trail No. 11 of 1985, by learned Sessions Judge, Tehri Garhwal, whereby the appellants Pitri Sharan, Ayodhya Parasad And Pitamber Dutt were convicted under Section 325 read with Section 34 of the Indian Penal Code, 1860 (for brevity hereinafter referred as I.P.C.), and under Section 452 of I.P.C., and each one of the appellants is sentenced by the trail court, to rigorous imprisonment for a period of three years, under each count. The trail court directed the sentences to run concurrently.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 04.11.1984, at about 11:00 P.M., when P.W. 1 Shyam Lal was inside his house in Village Godhmu, Patti Udaikot, District Tehri Garhwal along with his son P.W. 3 Pyare Lal and other members of his family, accused appellants hurled abuses from the backyard of the house of Shyam Lal. On this Shyam Lal came out of his house. The accused / appellants, thereafter, gave beating with lathies to Shyam Lal. When intervened by P.W. 3 Pyare Lal, he was also assaulted by the accused / appellants. P.W. 1 Shyam Lal suffered as many as 13 injuries, which included nine lacerated wounds. The injuries were recorded by P.W. 6. Dr. R.K. Ram, on 05.11.1984, at about 9:00 A.M. The injured was advised for X-ray of the injuries, which appears to have been caused by sticks and lathies. The X-ray report (Ext. A –8) disclosed that there was fracture in the orbital process of frontal bone on the right side, fracture on the nasal bone, on maxilla bone and on the mandible bone, apart from the dislocation of the proximal inter-phalangeal joint of the left little finger of the hand.

4) The trial court, after framing charge of offences punishable under Section 147, 307 / 149 and 452 of I.P.C. against the accused / appellants, recorded the evidence of the prosecution witnesses, which included the evidence of the eyewitnesses and the injured persons. The trial court, after recording the evidence and hearing the parties, found that offence punishable under Section 147, 307 / 149 of I.P.C. are not made out against the accused / appellants.

Acquitting the other two accused Shobha Ram and Sundar Lal, the trial court found only the three accused / appellants, namely Pitri Sharan, Ayodhya Parsad and Pitamber Dutt guilty in respect of the offences punishable under Section 325 / 34 and 452 of I.P.C. After hearing on sentence, the trial court sentenced all the three accused / appellants to rigorous imprisonment for a period of three years, under each count, for which they were convicted.

5) During the pendency of this appeal, a joint application No. 1721 of 2006 has been moved on behalf of the accused / appellants and injured Shyam Lal. In said application, it has been stated that parties have entered into compromise and that they want to compound the offence. The application is supported by affidavit. The injured Shyam Lal is also represented through his counsel, before this Court. The State counsel has also no objection, if the offence is compounded, between the injured and the accused / appellants. Considering the affidavit dated 01.09.2006, filed by Shyam Lal Uniyal, the injured, in the above circumstances, this Court is of the view that the permission to compound the offence punishable under Section 325 of I.P.C., may be accorded. The same is, accordingly, accorded. As such, in view of the compounding of offence punishable under Section 325 / 34 of I.P.C., the only charge remains against the accused / appellants, is the of offence punishable under Section 452 of I.P.C.

6) As to the offence punishable under Section 452 of I.P.C., examination of statements of witnesses P.W. 1

Shyam Lal (injured), P.W. 2 Darshan Lal (eyewitness), P.W. 3 Pyare Lal, clearly show that the incident has taken not inside the house, but outside the house of Shyam Lal, as such, the ingredients of offence punishable under Section 452 of I.P.C. are not made out. Therefore, the conviction and sentence recorded by the trial court against the accused / appellants, in respect of charge of offence punishable under Section 452 of I.P.C., is erroneous in law. They are entitled to be acquitted of said charge.

7) For the reasons as discussed above, the appeal deserves to be allowed in respect of the conviction and sentence recorded under Section 452 of I.P.C. The appeal is allowed. Accused / appellants Pitri Sharan, Ayodhya Parsad and Pitamber Dutt, are acquitted of the charge of offence punishable under Section 452 of I.P.C., as the same is not proved. AS far as the offence punishable under Section 325 / 34 is concerned, since, the offence has been compounded with the injured, with the permission of this Court, during the pendency of appeal, as discussed above, the accused / appellants are acquitted of said charge on the ground that the offence has been compounded. The accused / appellants are on bail. They need not to surrender. Their bail bonds and cancelled and sureties are discharged. (The Misc. Application No. 1721 of 2006 also stands disposed of).

(Prafulla C. Pant, J.)

Dt. November 03, 2006.

H.Negi